IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 955 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

PRATAP PANWAR

Appearance:

Mr. K.P. Raval, APP for the appellant.

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 27/11/2000

ORAL JUDGEMENT

The respondent was chargesheeted before the Assistant Commandant and Judicial Magistrate(F.C.), 97th BN, Gandhinagar, in Case No. 6 of 1988 for offences punishable under Section 10(a) and Section (n) of Central Reserve Police Force Act, 1949 (to be referred to as "the Act"). The learned Magistrate, on the appreciation of oral evidence led before him, held that it was not proved that the respondent had consumed liquor. However, the

learned Magistrate found the respondent guilty under Section 10(n) of the Act and sentenced to undergo imprisonment of 90 days.

2. The above order of the learned Magistrate was challenged by the respondent in the Sessions Court by filing Criminal Appeal No. 31 of 1988. The learned Sessions Judge, Ahmedabad (Rural) was pleased, by his judgment and order dated May 26, 1989, to allow the appeal by setting aside the judgment and order dated September 13, 1988 of the learned Assistant Commandant & Judicial Magistrate (F.C.), Gandhinagar, by acquitting the accused for the offence punishable under Section 10(n) of the CRPF Act.

3. The above order of the learned Sessions Judge, Ahmedabad (Rural) in Criminal Appeal No. 31 of 1988 has been challenged by the State of Gujarat in this appeal.

4. Heard learned APP,Mr. Raval. He read the evidence produced at the trial and submitted that the respondent had not challenged the oral evidence before the learned Judicial Magistrate and the evidence led by the prosecution had gone unchallenged. Inspite of that fact, learned Sessions Judge had acquitted the respondent for the offences under Section 10(n) of the Act. Learned APP further submitted that the reasonings given by the learned Sessions Judge in acquitting the accused are against the evidence led before the trial Court and if the Sessions Court was of the opinion that no opportunity was given to the respondent to defend his case, the learned Sessions Judge ought to have remanded the case rather than acquitting the accused of the charges framed against them.

5. Having considered the submissions of the learned APP, I am of the view that the judgment and order of the learned Sessions Judge cannot be called perverse or illegal. The respondent, during the pendency of the prosecution, was already dismissed from service. The incident in question had taken place in the year 1988 and if the case is remanded back to the learned Assistant Commandant & Judicial Magistrate (F.C.), 97th Battalion, CRPF, Gandhinagar, then the exercise of remanding the matter would be in futility. The witnesses who were examined before the learned Magistrate may not be available for leading evidence after a gap of 12 years. Further more, the respondent was already dismissed from service during the pendency of the prosecution and the appeal. The learned Sessions Judge, in Paragraph 31 of the Judgment, has given cogent and convincing reasons for

exercising discretionary power in favour of the respondent on purely humanitarian ground. The respondent had completed nearly 20 years of service and was involved in a trivial scuffle with the fellow police constable and that too at the fag end of his retirement. In my view, the discretion exercised by the learned Sessions Judge cannot be interfered in this appeal filed by the State of Gujarat.

6. The learned APP has not been able to point out any infirmity in the judgment and order of the learned Sessions Judge. Since I am in entire agreement with the reasoning and finding recorded by the learned Sessions Judge, it is not necessary to reiterate the appreciation of evidence and the findings recorded by the learned Sessions Judge so as to burden this judgment.

7. This being an acquittal appeal, when two views are possible, one, which goes in favour of the accused should be accepted.

8. As a result of the foregoing discussions, this appeal is dismissed.

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